


COUNTY OF YORK

MEMORANDUM

DATE: July 6, 2006 (BOS Mtg. 7/18/06)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator 

SUBJECT: Application No. UP-701-06, Richmond MHz, LLC d.b.a. NTELOS

ISSUE

This application requests a Special Use Permit, pursuant to Section 24.1-306 of the York County Zoning Ordinance (Category 17, No. 7), to authorize the establishment of a telecommunications tower up to 172' in height on the Magruder Elementary School campus located at 700 Penniman Road (Route 641) in the northeast quadrant of the intersection of Penniman Road and Merrimac Trail (Route 143) and further identified as Assessor's Parcel No. 10-14-A.

DESCRIPTION

- Property Owner: York County School Board
- Location: 700 Penniman Road (Route 641)
- Area: 13.2 acres
- Frontage: Approximately 750 feet on Penniman Road, 555 feet on Merrimac Trail (Route 143), and 510 feet on Hubbard Lane (Route 716)
- Utilities: Public water and sewer
- Topography: Mostly flat with some steep slopes along the northern property boundary
- 2025 Land Use Map Designation: General Business
- Zoning Classification: RC-Resource Conservation
- Existing Development: Magruder Elementary School
- Surrounding Development:
 - North: Used car storage lot, American Sentry self-storage, James-York Playhouse
 - East: Single-family detached homes (across Hubbard Lane)
 - South: Meineke Car Care Center and single-family detached homes in James City County (across Penniman Road)
 - West: WaWa convenience store/gas station (under construction)

- Proposed Development: 172' telecommunications tower (165' tower with a 7' lightning rod) with associated ground-mounted equipment

CONSIDERATIONS/CONCLUSIONS

1. In an effort to expand its coverage and eliminate major gaps in wireless voice and data services in residential areas of the upper County and the greater Williamsburg area, NTELOS wishes to construct a 172-foot telecommunications tower (including a 7-foot lightning rod) at the Magruder Elementary School campus located at the intersection of Merrimac Trail and Penniman Road. The proposed tower site would be in the right field area of the school's softball field approximately 400 feet west of Hubbard Lane, 675 feet north of Penniman Road, and 710 feet east of Merrimac Trail. This area is designated for General Business in the Comprehensive Plan and, like most County school sites, is zoned RC (Resource Conservation).
2. The County's policies regarding the siting of telecommunications towers are spelled out in the Comprehensive Plan, which states that new towers should be permitted "only where a proven need exists and only when all other opportunities, such as co-location on an existing tower or utilization of other existing structures have been exhausted." Accordingly, the applicant explored co-location opportunities, the only available space being on an existing Colonial Williamsburg Foundation tower located too far to the south and not high enough to meet NTELOS' needs. At the suggestion of staff, the applicant also contacted the City of Williamsburg to inquire about utilizing the city's water tank located approximately 330 feet north of the school property; however, the city has not been responsive to these inquiries and does not appear to be interested. (It should be noted that the visual benefits of locating on the water tank would be limited since the proposed tower height greatly exceeds the height of the water tank.) There are no other tall structures in the applicant's search ring, and the Dominion Virginia Power transmission structures to the north (which are located within residential subdivisions) are not structurally capable of supporting the equipment.

The Comprehensive Plan also states that the County should "[d]iscourage or prohibit telecommunications towers in historic or residential areas except where no other practical option exists." Magruder Elementary School is located along a major commercial corridor and not in a residential area; however, it abuts large residential areas to the east across Hubbard Lane and to the south across Penniman Road in James City County. Furthermore, although not located in an historic area, Route 143 is a major entry into the Williamsburg area (albeit one that is not in the Tourist Corridor Management overlay district and therefore not subject to special requirements of that district that are intended to protect the aesthetic and visual character of transportation corridors leading into and through the designated historic districts of Williamsburg and Yorktown).

3. The applicant has worked with County and School Division staff to identify the optimal location and design for the proposed tower. Several alternative locations on the school property were considered and evaluated, and the right field location next to the

basketball courts was selected because of a) its distance from Merrimac Trail, b) surrounding tree cover that further obscures views not just from Merrimac Trail but from residential areas to the north and northeast, c) ease and safety of access for maintenance trucks, and d) compliance with County setback requirements. Furthermore, as requested by staff in order to reduce the visibility of the tower, the applicant proposes to use a pole with concealed antennas (known as a “slick stick”).

In order for the Planning Commission, Board, and staff to evaluate the visibility of the proposed tower from nearby residential areas and major corridors, particularly Merrimac Trail, the applicant has submitted photo simulations of the proposed tower. In addition, a balloon test and a crane test were taken at alternative locations on the subject parcel, providing additional evidence of the potential visual impacts of the tower. The tower would, of course, be visible from residential properties across Hubbard Lane and Penniman Road but generally not from the interior of these neighborhoods. Dense vegetation in the areas to the north of the school property, behind and adjacent to James York Plaza, and along Merrimac Trail south of Penniman Road provides significant screening from surrounding areas. Visibility of the proposed tower would be further reduced by the use of internal antennas rather than the typical external antenna arrays.

4. The proposed tower would be a co-location site designed to accommodate a total of three wireless communications providers. Ground-mounted equipment at the base of the tower would be located within a 2,338-square foot lease area surrounded by a six-foot (6') fence beyond the existing outfield fence. Vehicular access to this gated compound area would be via a twelve-foot (12') access road paved with a grassy paver system (similar to the existing tower at Waller Mill Elementary School), which would connect with an existing parking area and asphalt road located behind the school and extending to Hubbard Lane. As with other towers on school sites, the compound would be covered with green netting to prevent softballs, baseballs, etc. from falling into the compound.
5. The Federal Aviation Administration (FAA) will analyze the proposed tower to ensure that it will not infringe on air traffic flight patterns. If the FAA requires a permit for the construction of the tower, the applicant will need to provide evidence of FAA approval prior to the County's final approval for construction of the tower. A condition to this effect is included as part of the approving resolution.
6. As a condition of approval, the applicant will be required to submit a statement from a registered engineer certifying that NIER (non-ionizing electromagnetic radiation) emitted from the tower will not result in a ground level exposure at any point outside such facility that exceeds the maximum applicable exposure standards established by any regulatory agency of the federal government or the American National Standards Institute.
7. Although the Federal Telecommunications Act of 1996 did not preempt local zoning authority, localities are somewhat constrained in their ability to deny or delay requests for towers. Such decisions may be enjoined or overturned by the FCC or federal

courts if the intent or the effect of the decision is to discriminate between types of communications service providers. They can also be overturned if the decision is not reached within a reasonable period of time, if the denial is unreasonable, or if the denial is based on public health concerns relating to radio frequency emissions. In addition, the Act places an obligation upon localities to assist the telecommunications providers in finding a facility somewhere within the footprint (coverage area).

PLANNING COMMISSION RECOMMENDATION

The Planning Commission considered this application at its June 14 meeting and, subsequent to conducting a public hearing at which only the applicant and his agent spoke, voted 6:0 (Mr. Barba absent) to recommend approval.

COUNTY ADMINISTRATOR RECOMMENDATION

Although located along a major commercial corridor, the proposed tower will not be visually obtrusive, in my opinion, because of its deep setback, the dense vegetation in the surrounding area, and the absence of external antenna arrays. I believe this proposal is consistent with the policies set forth in the Comprehensive Plan with regard to telecommunications towers. Therefore, based on the considerations and conclusions as noted, I recommend that the application be approved subject to the conditions set forth in proposed Resolution No. 06-98.

Carter/3337:TCC

Attachments

- Excerpts of Planning Commission minutes, June 14, 2006
- Zoning Map
- Aerial Photo
- Sketch Plan
- Applicant's narrative
- Photo simulations
- Tower Visibility Analysis
- Propagation maps
- Proposed Resolution No. 06-98